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PAUL REICHE III and ROBERT FREDERICK FORD

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

14 STARDOCK SYSTEMS, INC.,

15 Plaintiff,

16 v.

17 PAUL REICHE III and ROBERT
FREDERICK FORD,

18 Defendants.

20 PAUL REICHE III and ROBERT
FREDERICK FORD,

21 Counter-Claimants,

22 v.

23 STARDOCK SYSTEMS, INC.,

24 Counter-Defendants.

Case No. 4:17-CV-07025-SBA

[DISCOVERY MATTER]

**DEFENDANTS AND COUNTER-
CLAIMANTS PAUL REICHE III AND
ROBERT FREDERICK FORD'S
REQUEST FOR TELEPHONIC
CONFERENCE OR, IN THE
ALTERNATIVE, FOR THE COURT TO
ORDER PROPOSED DEPOSITION
SCHEDULE; DECLARATION OF
STEPHEN C. STEINBERG**

Judge: Hon. Kandis A. Westmore

WRITTEN REQUEST FOR TELEPHONIC CONFERENCE

Defendants and Counter-Claimants Paul Reiche III (“Reiche”) and Robert Frederick Ford (“Ford”) (collectively, “Reiche and Ford”) respectfully request a telephonic conference with the Court early next week or as soon thereafter as possible, for the purposes of enforcing the Court’s meet and confer requirement, or for the Court to fashion an alternative procedure, pursuant to the Court’s Standing Order, ¶ 16. As detailed below and in the attached declaration of Stephen C. Steinberg, Plaintiff Stardock Systems Inc. (“Stardock”) refuses to meet and confer with counsel for Reiche and Ford regarding available deposition dates for Stardock’s party witnesses prior to the parties’ fact discovery cutoff on December 21, 2018. During Reiche and Ford’s last attempt to meet and confer with Stardock’s counsel on this issue, Stardock’s counsel stated that she was “not authorized” to provide deposition dates for Stardock or its party witnesses in December or January. Because fact discovery in this case is fast approaching, Reiche and Ford can no longer continue to request dates and/or meet and confer communications with Stardock, when such requests continue to be futile.

The fact discovery cutoff in this case is December 21, 2018. [Dkt 69]. Counsel for Reiche and Ford have repeatedly requested deposition dates for Stardock and its party witnesses, beginning in the summer of this year, to no avail. [Declaration of Stephen S. Steinberg (“Steinberg Decl.”), ¶ 2]. Indeed, to date, Stardock has not provided a single available deposition date for a single party witness in this case prior to the fact discovery cutoff. [Steinberg Decl., ¶ 3]. Consequently, on November 14 and 15, 2018, Reiche and Ford noticed the depositions of multiple Stardock witnesses, each of which was scheduled to take place before the December 21 discovery cutoff and each of which provided the respective deponents with reasonable notice to appear. [Steinberg Decl., ¶ 4]. On November 20, 2018, Stardock’s counsel informed Reiche and Ford’s counsel that none of the noticed depositions dates would work for Stardock’s party witnesses, but provided no alternative dates. [Steinberg Decl., ¶ 5]. Since then, counsel for Reiche and Ford have repeatedly requested, both via phone and email, that Stardock provide dates on which its party witnesses are available in

1 December and, to the extent necessary, in January¹. [Steinberg Decl., ¶ 6]. To date, Stardock has
 2 not provided a single available date for any of its party witnesses in December or January, despite
 3 Reiche and Ford properly noticing such depositions. [Steinberg Decl., ¶ 3]. Nor has Stardock's
 4 counsel actually represented that Stardock's witnesses are truly unavailable for depositions in
 5 December or January, just that counsel will not produce them². Stardock's counsel has further stated
 6 that she is "not authorized" to provide dates for Stardock's party witnesses in December or January.
 7 [Steinberg Decl., ¶ 7].

8 Faced with Stardock's blanket refusal to produce its witnesses for deposition in the next two
 9 months, or meaningfully meet and confer with Reiche and Ford regarding its witnesses' availability,
 10 Reiche and Ford are forced to seek this Court's assistance in facilitating a meet and confer between
 11 the parties' regarding Stardock's witness availability. It is clear that no progress will be made
 12 without such Court intervention. Consequently, Reiche and Ford respectfully request the Court
 13 conduct a telephonic hearing at its earliest convenience to facilitate this discussion. Given the
 14 parties' fact discovery cutoff date is December 21, 2018, Reiche and Ford respectfully request that
 15 the Court schedule the telephonic conference early next week, and are generally available during
 16 that timeframe.

17 DATED: November 30, 2018

BARTKO ZANKEL BUNZEL & MILLER
 A Professional Law Corporation

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 20 By: 

Stephen C. Steinberg

Tiffany S. Hansen

Attorneys for Defendants and Counter-Claimants

PAUL REICHE III and ROBERT FREDERICK FORD

24 ¹ Counsel for Reiche and Ford understand that situations may arise in which a deponent is
 25 absolutely unavailable prior to the discovery cutoff. If that were the case, Reiche and Ford would
 26 request an exception to take such a deposition after the discovery cutoff. Because Stardock
 27 refuses to meet and confer regarding deposition dates, Reiche and Ford are not even sure which, if
 any, of Stardock's witnesses have an actual conflict rendering them unavailable prior to the
 December 21, 2018 discovery cutoff. [Steinberg Decl., ¶ 6].

28 ² Indeed, based on other comments by Stardock's counsel, it appears that Stardock's party
 witnesses *are* available, at least by mid-January.

DECLARATION OF STEPHEN C. STEINBERG

I, Stephen C. Steinberg, declare and state as follows:

1. I am an attorney at law admitted to practice in all courts of the State of California. I am a principal in the law firm of Bartko, Zankel, Bunzel & Miller, counsel of record for Defendants and Counter-Claimants Paul Reiche III (“Reiche”) and Robert Frederick Ford (“Ford”) (collectively, “Reiche and Ford”) in the above captioned matter. The matters in this Declaration are true of my own personal knowledge, and if called upon as a witness, I could and would competently testify thereto.

2. My co-counsel and I have repeatedly requested, beginning in the summer of this year, that Stardock’s counsel provide deposition dates for its party witnesses. We have done so in person, by phone, and over email. We have also requested to meet with Stardock’s counsel in person, given that their office is in the same building as our office, to no avail.

3. To date, Stardock has not provided a single available deposition date for a single one of its party witnesses, other than a vague statement that its witnesses are generally available after February 9, 2018 (2 1/2 months from now, well after the discovery cutoff, and during a time when Reiche and Ford’s counsel has stated they are unavailable).

4. On November 14 and 15, 2018, my office served deposition notices for multiple Stardock witnesses. Each of the noticed deposition was scheduled to take place before the December 21, 2018 discovery cutoff and each deposition notice provided the respective deponents with reasonable notice to appear.

5. On November 20, 2018, Stardock’s counsel claimed that none of the dates noticed by Reiche and Ford would work for Stardock’s witnesses or its counsel.

6. Since then, my co-counsel and I continued to request available dates for Stardock’s party witnesses prior to the discovery cutoff on December 21, 2018 or, to the extent necessary, in early January. If one of Stardock’s witnesses is truly not available until after the discovery cutoff, Reiche and Ford would petition the Court for additional time, past the discovery cutoff, to conduct that deposition based on the witness’ schedule. However, Stardock has never stated that its witnesses are unavailable prior to December 21, 2018, only that counsel will not produce them.

